

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-16  
(August 28, 1995)

**Running for Election to Non-partisan,  
Charter Government Committee**

**Issue**

May a pro tem justice of the peace be an election candidate for a charter committee without resigning from office?

**Answer:** No.

**Facts**

In the last general election, the voters in Maricopa and Pinal counties approved Proposition 105 which authorizes their respective boards of supervisors to hold two-stage elections to decide if the counties will adopt home rule. In the first stage, non-partisan elections would be held to determine the membership of the committees needed to evaluate the proposed charter government. During their six-month term of office, the fifteen members of the county committees would write the charter and then submit it to the voters during the second stage of the process. All qualified electors of the county, including all elected public officials, are eligible to seek election to the charter committee.

**Discussion**

A judge is required to comply with Canon 5A(4) which provides that, "a judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election." Canon 5A(5) provides that, "Except as otherwise permitted in this code, a judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice."

"Political activity" has been defined as "related or connected with the orderly conduct of government and the peaceful organization, regulation and administration of the government." *Lockheed Aircraft Corp. v. Superior Court*, 28 Cal.2d 481, 171 P.2d 21 (1946).

Although the Code of Judicial Conduct makes a distinction between a pro tem part-time judge and a pro tem full-time judge (Application Sections D and E), neither is exempt from Canon 5A(4). A pro tem part-time judge is exempt from Canon 4C(2) which prohibits a judge from accepting *an appointment* to a governmental position except one relating to the law, the legal system or administration of justice. A pro tem part-time judge is also exempt from Canon 5A(1)(d) which prohibits a judge from *actively taking part in any political campaign* other than his or her own election to judicial office.

## Advisory Opinion 95-16

Under the facts of this case the distinction between a pro tem part-time and pro tem full-time judge makes no difference. The selection to the charter committee is not by "appointment" (Canon 4C(2)) but rather by election of the voters. The inquiry here also involves more than "actively taking part" in a political campaign (Canon 5A(1)(d)). It directly involves the judge becoming a "candidate" for a non-judicial office (Canon 5A(4)).

On the facts of this inquiry the judge would be prohibited from being an election candidate without resigning from office.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 4C(2), 5A(1)(d), 5A(4), 5A(5) and Application Sections D and E (1993).

### **Other References**

*Lockheed Aircraft Corp. v. Superior Court*, 28 Cal.2d 481, 171 P.2d 21 (1946).